

FILED
Clerk
District Court

AUG 26 2008

For The Northern Mariana Islands
By _____
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

LI, FENFEN,

Plaintiff

v.

SEAHORSE INC. SAIPAN,

Defendant

Civil Action No. 07-0033

ORDER DENYING MOTION
TO DI-BIFURCATE THE
TRIAL and GRANTING MOTION
FOR JUDGMENT ON THE
PLEADINGS AS TO THE
CONSUMER PROTECTION
CLAIM

THIS MATTER came before the court on Thursday, August 28, 2008, for hearing of plaintiff's motion to di-bifurcate the trial and defendant's motion for judgment on the pleadings as to plaintiff's claim for relief under the Commonwealth's consumer protection law. Plaintiff appeared by and through her attorney, Joseph Horey; defendant appeared by and through its attorney, Richard W. Pierce.

1 THE COURT, having considered the written and oral arguments of counsel,
2 rules as follows:

3
4 Plaintiff's motion to di-bifurcate the trial is denied. First, it is untimely. In the
5 court's order of March 25, 2008, the parties were asked to submit memoranda on the
6 court's preliminary conclusion that this case fell within the admiralty Limitation of
7 Liability Act because jet-skis are covered by the Act. Plaintiff's attorney agreed, albeit
8 grudgingly, that it did at the status conference on May 2nd.¹ This motion to de-
9 bifurcate the trial was filed July 18, 2008, two-and-a-half months later.
10

11
12 Second, plaintiff's claim that she is entitled to a jury relies on cases interpreting
13 the Jones Act, which *does* provide for jury trials, by statute, unlike the instant matter.

14 Finally, plaintiff's legal argument also fails. Entitlement to a jury is succinctly
15 addressed in 8 *Benedict on Admiralty* § 8.05:
16

17 Fed.R.Civ.P. 38(e) [attached] provides that the civil rules should not be
18 construed to create the right to a jury trial in an admiralty matter. Most
19 limitation proceedings are tried by the court in admiralty. The lack of a
20 jury in admiralty is rarely questioned, and, when it is, the courts usually
21 have little difficulty in disposing of the issue. In *In re High Hook, Inc.*, for
22 example, a fishing vessel owner filed a limitation complaint pleading
23 admiralty jurisdiction under Fed.R.Civ.P. 9(h), seeking relief under the

24 1

25 The court's case management scheduling order of May 2, 2008, is shorter than
26 usual and omits many of the normal deadlines because the parties had agreed that the
trial would be bifurcated. The order even states "This trial is bifurcated for the
purpose of determining Negligence and Privity and, the portion for damages is stayed
until resolution of Negligence and Privity."

1 Limitation Act. The claimant, a passenger who allegedly was injured
 2 aboard the vessel, demanded a jury trial under the savings clause.² The
 3 court found that the complaint asserted an admiralty claim, this being
 4 the case whether or not it was denominated as such under Rule 9(h).
 5 Noting that Rule 38(e) has been held to deny a right to jury trial on any
 6 claim that is cognizable in admiralty, regardless of what is pleaded, the
 7 court held that, absent a statutory right to a jury, such as in the Jones
 8 Act, it was without authority to grant a jury trial merely because there
 9 was diversity of citizenship between the parties.

10 More germane to the argument raised by plaintiff is the following language,
 11 from the same section of Benedict:

12 As discussed, the Supreme Court, in *Langnes v. Green* and *Ex Parte Green*,
 13 held that the owner's right to limitation in admiralty must be balanced
 14 against the claimant's right to proceed at law before a jury under the
 15 saving clause. The holding has since expanded to include *the right of the*
 16 *single-claim claimant to proceed at law*, and the right of multiple claimants to
 17 proceed at law, *when their claims total less than the value of the limitation fund*.
 18 (Emphasis added.)

19 Here, plaintiff's claim *must* be greater than the value of the jet-ski, i.e. "the
 20 limitation fund," or this matter would have settled when defendant posted the bond
 21 (which is for less than \$10,000). Hence, there is no entitlement to a jury.

22 Defendant's motion for judgment on the pleadings on plaintiff's

23 ² Black's Law Dictionary defines a "saving-to-suit clause" or "saving
 24 clause" in the context of the federal statutory provision granting admiralty
 25 and maritime jurisdiction to the federal courts, as a clause that preserves the
 26 option to file suit in a nonadmiralty court. 28 U.S.C. § 1333(1). The
 nonadmiralty court is typically either a state court or a law-side federal court.
 Under the reverse-*Erie* doctrine, the nonadmiralty court is required to apply
 the same law that the admiralty court would have used.

1 Commonwealth consumer protection law claim, and its provision for an award of
2 attorneys' fees, is granted. Courts have held that such statutes are pre-empted by
3 federal maritime law. *See e.g. Churchill v. F/V Fjord*, 857 F.2d 571, 576 (9th Cir. 1988)
4 (in this case involving the Limitation of Liability Act, the court reiterated that a state
5 law that conflicts with established federal maritime law or interferes with the goal of
6 uniformity of admiralty law is completely pre-empted and is to be given no effect).
7
8 *See also* 1 Schoenbaum *Admiralty and Maritime Law* (4th ed.) § 4-3 (2001) (discussion of
9 pre-emption of state laws). Accordingly, the court finds that the Commonwealth's
10 Consumer Protection Act, 4 N.Mar.I. Code § 5101 *et seq.*, is pre-empted by the
11 Limitation of Liability Act and defendant's motion for judgment on the pleadings is
12 granted.
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16 IT IS SO ORDERED.

17 DATED this 26th day of August, 2008.
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22 ALEX R. MUNSON

23 Judge
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